

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIV. NO.
)	
REICHHOLD LIMITED,)	
CANADYNE-GEORGIA)	
CORPORATION, WOOLFOLK)	
CHEMICAL WORKS, LTD.,)	
THE J.W. WOOLFOLK TRUST,)	
THE ESTATE OF THOMAS W.)	
CLEVELAND, JACQUELINE)	
WOOLFOLK MATHES,)	
PEACH COUNTY PROPERTY,)	
INC., and SURECO, INC.,)	
)	
Defendants.)	

COMPLAINT

The United States of America ("United States"), by the authority of the Attorney General of the United States, and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

INTRODUCTION

1. This is a civil action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, for recovery of costs that have been incurred by the United States in response to a release or threatened release of hazardous substances at and from the Woolfolk Chemical Superfund Site in Fort Valley, Georgia (the

"Site"). In addition, the United States seeks treble punitive damages and fines from Defendant Reichhold Limited ("Reichhold") and Canadyne-Georgia Corporation, pursuant to Section 107(c)(3), 42 U.S.C. § 9607(c)(3), and Section 106(b), 42 U.S.C. § 9606(b), based on their refusal to comply with unilateral administrative orders issued by EPA. The United States also seeks a declaratory judgment pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), that all Defendants are liable for future costs of removal and remedial action for the Site incurred by the United States that are not inconsistent with the National Contingency Plan, 40 C.F.R. § 300.

2. Notice of the commencement of this action has been given to the State of Georgia pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a).

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

4. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because the claims arose in this District and the release and threatened releases of hazardous substances that gave rise to the United States' claims occurred in this District.

DEFENDANTS

5. Defendant Woolfolk Chemical Works, Ltd. ("WCW, Ltd. III"), is a Georgia limited partnership.

6. Defendant Canadyne-Georgia Corporation is a Georgia corporation.

7. Defendant Reichhold Limited is a Canadian corporation.

8. Defendant Peach County Property, Inc. is a Georgia corporation, formerly known as Security Chemical Company.

9. Defendant SureCo, Inc. is a Georgia corporation and is the successor in interest by merger to SurePack, Inc.

10. Defendant J.W. Woolfolk Trust is a trust organized under the laws of the State of Georgia.

11. Defendant Estate of Thomas W. Cleveland is an estate established under the laws of the State of Georgia.

12. Defendant Jacqueline Woolfolk Mathes is an individual residing in the State of Georgia.

GENERAL ALLEGATIONS

13. As of 1910, the Site was used as a lime-sulfur plant. J.W. Woolfolk purchased the lime-sulfur plant in 1921 and began manufacturing pesticides as a sole proprietorship. In 1925, Mr. Woolfolk transferred ownership of the pesticide plant to J.W. Woolfolk Company.

14. In 1941, J.W. Woolfolk Company dissolved and distributed all of its assets, including the Site, to its

shareholders including: Mr. Woolfolk and Jacqueline Woolfolk Mathes, one of Mr. Woolfolk's three daughters.

15. Through an indenture dated June 29, 1941, the J.W. Woolfolk Company shareholders attempted to transfer title to Woolfolk Chemical Works Ltd. ("WCW, Ltd. I"), a limited partnership, but because the indenture was not executed and recorded until 1973, legal title to the Site did not pass until 1973 and the shareholders remained owners until 1973.

16. Mr. Woolfolk's daughters also each owned a general partnership interest in WCW, Ltd. I. In 1942, the daughters placed their partnership interests in WCW, Ltd. I into inter vivos trusts, which became irrevocable upon Mr. Woolfolk's death in 1945. Mr. Woolfolk's will created the J.W. Woolfolk Trust, which came to own his partnership interest in the Site.

17. Due to Mr. Woolfolk's death, WCW, Ltd. I dissolved, and in 1945 a second Woolfolk limited partnership ("WCW, Ltd. II") was formed to hold the assets of WCW, Ltd. I. The partners in WCW, Ltd. II included the J.W. Woolfolk Trust and the three inter vivos trusts established by Mr. Woolfolk's three daughters.

18. After the retirement of a general partner in WCW, Ltd. II in 1957, WCW, Ltd. II dissolved, and a third Woolfolk limited partnership ("WCW, Ltd. III") was formed to hold the assets of WCW, Ltd. II.

19. During the time that WCW, Ltd. I and II operated the

Site, WCW, Ltd. I and WCW, Ltd. II manufactured and stored arsenic based pesticides.

20. During the time that WCW, Ltd. III operated the Site, WCW, Ltd. III manufactured and stored organic pesticides, such as DDT, toxaphene, and lindane.

21. During the time that WCW, Ltd. III operated the Site, hazardous substances were disposed of at the Site.

22. In 1972, WCW, Ltd. III transferred the Site to a corporation called Woolfolk Chemical Works, Inc., and that corporation continued manufacturing organic pesticides at the Site.

23. During the time that Woolfolk Chemical Works, Inc. owned and operated the Site, hazardous substances were disposed of at the Site.

24. WCW, Ltd. III has not dissolved.

25. In 1977, Canadyne Corporation, a subsidiary of R.L. Holdings, which was a subsidiary of Reichhold Limited, acquired all the stock of Woolfolk Chemical Works, Inc., and changed the name of the corporation to Canadyne-Georgia Corporation.

26. Canadyne-Georgia Corporation continued manufacturing pesticides at the Site. During the time that Canadyne-Georgia Corporation owned and operated the Site, hazardous substances were disposed of at the Site.

27. In 1984, Peach County Property, Inc. purchased all but

one parcel of the Site from Canadyne-Georgia Corporation. From 1984 to 1986, Peach County Property, Inc. operated the Site and manufactured organic pesticides under the trade names Security Chemical Company and Security Law & Garden Products Company. During the time that Peach County Property, Inc. owned a portion of the Site and operated the Site, hazardous substances were disposed of at the Site.

28. In 1985, Peach County Property, Inc. sold a building on the Site to Marion Allen Insurance and Realty Company. In 1986, SureCo, Inc. and SurePack, Inc. leased the Site (except the parcel retained by Canadyne-Georgia Corporation and the parcel sold to Marion Allen Insurance and Realty Company) to SurePack, Inc. On December 29, 1992, SurePack, Inc. merged into SureCo. From 1986 to 1999, SurePack/SureCo operated the Site and manufactured pesticides at the Site. During the time that SurePack/SureCo operated the Site, hazardous substances were disposed of at the Site.

29. In 1986 and 1987, Reichhold Limited directed the demolition of a 40,000 square foot building heavily contaminated with hazardous substances, including arsenic, and arranged for the disposal of the contaminated debris at the Site. The contaminated debris has contributed and continues to contribute to groundwater contamination at the Site.

30. In 1988, the Site was listed on the National Priorities

List, a list of CERCLA Sites with the highest priority for response actions.

31. In 1990, EPA and Canadyne-Georgia Corporation entered an Administrative Order by Consent for the performance of a Remedial Investigation/Feasibility Study ("RI/FS"). Canadyne-Georgia Corporation had no substantial assets and all funding to satisfy the obligations of the AOC came from Reichhold Limited.

32. In 1994, EPA issued a unilateral administrative order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, to Reichhold Limited and Canadyne-Georgia Corporation to implement the Remedial Design and Remedial Action for Operable Unit #1, relating to a groundwater extraction system. In 1998, EPA issued a unilateral administrative order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, to Reichhold Limited and Canadyne-Georgia Corporation to implement the Remedial Design and Remedial Action for Operable Unit #3, relating to the disposal of arsenic contaminated debris at the landfill at the Site. Without sufficient cause, Reichhold Limited and Canadyne-Georgia Corporation have refused to comply with the unilateral administrative orders.

33. EPA has spent money from the Hazardous Substance Superfund established by 26 U.S.C. § 9507 to perform the work that Reichhold Limited and Canadyne-Georgia refused to perform pursuant to the unilateral orders.

34. To date, the United States has incurred costs of removal or remedial action of at least \$9 million. The United States continues to incur response costs, including costs of enforcement.

35. Section 107(a) of CERCLA, 42 U.S.C. §9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a . . . facility,
- (2) any person who at the time of disposal of any hazardous substances owned or operated any facility at which hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment . . . of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances. . .

* * *

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

42 U.S.C. § 9607(a).

36. Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3) provides in part:

If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or

remedial action upon order of the President pursuant to Section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action. . . .

42 U.S.C. §9607(c)(3).

37. Section 106(b) of CERCLA, 42 U.S.C. § 9606(b) provides in part:

Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) of this section may, in an action brought in the appropriate United States District Court to enforce such order, be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

42 U.S.C. § 9606(b). For violations occurring on and after January 31, 1997, however, the civil penalty amount increased to \$27,500 per day of violation. See 40 C.F.R. § 19.

FIRST CLAIM FOR RELIEF
(Cost Recovery against
Canadyne-Georgia Corporation)

38. Plaintiff realleges and incorporates by reference paragraphs 1 through 37 as if fully set forth herein.

39. A release or threat of release of hazardous substances at and from the Site has caused and will continue to cause the United States to incur costs of removal and remedial action not inconsistent with the National Contingency Plan, 40 C.F.R. § 300.

40. Canadyne-Georgia Corporation is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the owner and operator of a facility at the time of disposal of hazardous

substances, from which facility there has been a release or a threatened release of a hazardous substance. Canadyne-Georgia Corporation is also liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as the owner of a facility, from which facility there has been a release or a threatened release of a hazardous substance.

41. Canadyne-Georgia Corporation is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs of removal and remedial action incurred by the United States in connection with the Site that are not inconsistent with the National Contingency Plan.

SECOND CLAIM FOR RELIEF
(Cost Recovery against
Reichhold Limited)

42. Plaintiff realleges and incorporates by reference paragraphs 1 through 37 as if fully set forth herein.

43. A release or threat of release of hazardous substances at and from the Site has caused and will continue to cause the United States to incur costs of removal and remedial action not inconsistent with the National Contingency Plan, 40 C.F.R. § 300.

44. Reichhold Limited is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as an operator of a facility at the time of disposal of hazardous substances, from which facility there has been a release or a threatened release of a hazardous substance. Reichhold Limited is also liable under Section

107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), as one who arranged for the disposal of a hazardous substance controlled and possessed by Reichhold Limited at a facility owned by another, from which facility there has been a release or a threatened release of a hazardous substance.

45. Reichhold Limited is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs of removal and remedial action incurred by the United States in connection with the Site that are not inconsistent with the National Contingency Plan.

THIRD CLAIM FOR RELIEF
(Treble Costs against
Reichhold Limited and Canadyne-Georgia)

46. Plaintiff realleges and incorporates by reference paragraphs 1 through 45 as if fully set forth herein.

47. Reichhold Limited and Canadyne-Georgia Corporation failed to properly provide removal or remedial action upon order of EPA pursuant to Section 106 of CERCLA. Their failure was without sufficient cause. Reichhold Limited and Canadyne-Georgia Corporation are liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for such response actions.

FOURTH CLAIM FOR RELIEF
(Enforcement of Orders and Fines
against Reichhold Limited and Canadyne-Georgia)

48. Plaintiff realleges and incorporates by reference paragraphs 1 through 45 as if fully set forth herein.

49. Reichhold Limited and Canadyne-Georgia Corporation, without sufficient cause, willfully violated, and failed and refused to comply with EPA's unilateral administrative orders for Operable Unit #1 and Operable Unit #3. The orders should be enforced to the extent EPA has not already performed the work. Moreover, this Court should fine Reichhold Limited and Canadyne-Georgia Corporation not more than \$27,500 for each day in which such violations occurred and continued.

FIFTH CLAIM FOR RELIEF
(Cost Recovery against
Woolfolk Chemical Works, Ltd.)

50. Plaintiff realleges and incorporates by reference paragraphs 1 through 37 as if fully set forth herein.

51. A release or threat of release of hazardous substances at and from the Site has caused and will continue to cause the United States to incur costs of removal and remedial action not inconsistent with the National Contingency Plan.

52. WCW, Ltd. III is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as an owner and operator of a facility at the time of disposal of hazardous substances, from which facility there has been a release or a threatened release

of a hazardous substance.

53. WCW, Ltd. III is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs of removal and remedial action at the Site, including costs the United States has incurred and will continue to incur.

SIXTH CLAIM FOR RELIEF

(Cost Recovery against the J.W. Woolfolk Trust and the Estate of Thomas W. Cleveland)

54. Plaintiff realleges and incorporates by reference paragraphs 1 through 37 and paragraphs 51 through 53 as if fully set forth herein.

55. The J.W. Woolfolk Trust was a general partner in WCW, Ltd. III and is jointly liable for partnership liabilities.

56. Thomas W. Cleveland was a general partner in WCW, Ltd. III and is jointly liable for partnership liabilities. The Estate of Thomas W. Cleveland is the successor to the liabilities of Thomas W. Cleveland.

57. J.W. Woolfolk Trust and the Estate of Thomas W. Cleveland are jointly and severally liable to the United States for the costs of removal and remedial action at the Site, including costs the United States has incurred and will continue to incur.

SEVENTH CLAIM FOR RELIEF
(Cost Recovery against J.W. Woolfolk
Trust and Jacqueline Woolfolk Mathes)

58. Plaintiff realleges and incorporates by reference paragraphs 1 through 37 as if fully set forth herein.

59. The J.W. Woolfolk Trust and Jacqueline Woolfolk Mathes are liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the owners a facility at the time of disposal of hazardous substances, from which facility there has been a release or a threatened release of a hazardous substance.

60. The J.W. Woolfolk Trust and Jacqueline Woolfolk Mathes are jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs of removal and remedial action at the Site, including costs the United States has incurred and will continue to incur.

EIGHTH CLAIM FOR RELIEF
(Cost Recovery against
Peach County Property, Inc.)

61. Plaintiff realleges and incorporates by reference paragraphs 1 through 37 as if fully set forth herein.

62. A release or threat of release of hazardous substances at and from the Site has caused and will continue to cause the United States to incur costs of removal and remedial action not inconsistent with the National Contingency Plan.

63. Peach County Property, Inc. is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the owner and

operator of a facility at the time of disposal of hazardous substances, from which facility there has been a release or a threatened release of a hazardous substance. Peach County Property, Inc. is also liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as the owner a facility, from which facility there has been a release or a threatened release of a hazardous substance.

64. Peach County Property, Inc. is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs of removal and remedial action at the Site, including costs the United States has incurred and will continue to incur.

NINTH CLAIM FOR RELIEF
(Cost Recovery against
SureCo, Inc.)

65. Plaintiff realleges and incorporates by reference paragraphs 1 through 37 as if fully set forth herein.

66. A release or threat of release of hazardous substances at and from the Site has caused and will continue to cause the United States to incur costs of removal and remedial action not inconsistent with the National Contingency Plan.

67. SureCo, Inc. is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the operator of a facility at the time of disposal of hazardous substances, from which facility there has been a release or a threatened release of a hazardous

substance.

68. SureCo, Inc. is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the costs of removal and remedial action at the Site, including costs the United States has incurred and will continue to incur.

TENTH CLAIM FOR RELIEF
(Declaratory Judgment
against All Defendants)

69. Plaintiff realleges and incorporates by reference paragraphs 1 through 68 as if fully set forth herein.

70. Plaintiff is entitled to entry of a declaratory judgment that the defendants are jointly and severally liable for all future costs of removal and remedial action incurred in response to a release or threatened release of a hazardous substance at or from the Site, not inconsistent with the National Contingency Plan.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that this Court:

A. Enter judgment against all Defendants, jointly and severally, in favor of the United States for all previously unreimbursed costs of removal and remedial action incurred by the United States in response to the release or threatened release of a hazardous substance at or from the Site, plus interest;

B. Enter a declaratory judgment against all Defendants and

in favor of the United States declaring the Defendants liable, jointly and severally, for all costs of removal or remedial action to be incurred by the United States in response to the release or threatened release of a hazardous substance at or from the Site, not inconsistent with the National Contingency Plan;

C. Enter judgment against Defendant Reichhold Limited and Canadyne-Georgia Corporation and in favor of the United States for treble the costs incurred by EPA from the Hazardous Substance Superfund because of their failure to comply with the unilateral administrative orders issued by EPA;

D. Enter judgment against Defendants Reichhold Limited and Canadyne-Georgia Corporation and in favor of the United States for fines not to exceed \$27,500 per day for each day that Defendants Reichhold and Canadyne-Georgia Corporation willfully violated, or failed or refused to comply with the unilateral administrative orders issued by EPA; and

E. Enforce the unilateral administrative orders as to Defendants Reichhold Limited and Canadyne-Georgia Corporation to the extent EPA has not already completed the work; and

F. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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